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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/066,753	02/06/2002	Abraham Amir	02/23230	4762

7590 08/17/2004

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EXAMINER

COE, SUSAN D

ART UNIT

PAPER NUMBER

1654

DATE MAILED: 08/17/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action

Application No.

10/066,753

Applicant(s)

AMIR ET AL.

Examiner

Susan D. Coe

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--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 04 August 2004 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
- ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ they raise the issue of new matter (see Note below);
- (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____.

3. ☐ Applicant's reply has overcome the following rejection(s): _____.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: see attached.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____.

Claim(s) objected to: _____.

Claim(s) rejected: 1 and 3-8.Claim(s) withdrawn from consideration: 9-14.

8. ☐ The drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____.
10. ☐ Other: _____

ATTACHMENT TO ADVISORY ACTION

1. In the response filed August 4, 2004, applicant indicates that the claims have been amended; however, the claims presented are not marked up to show changes and appear to be the same as the previously presented claims. Thus, it is unclear why the applicant indicates that the claims have been amended.

2. The text of those sections of Title 35, U.S. Code, not included in this action can be found in a prior Office action.

3. All of applicant's arguments regarding the 103 rejection over US Pat. No. 4,469,676 in view of Brittberg have been fully considered but are not persuasive. Applicant argues that US '676 is dissimilar from the presently claimed invention because US '676 uses non-proliferative cartilage cells rather than the cartilage producing cells claimed. In addition, applicant argues that Brittberg would not motivate a person of ordinary skill in the art to administer cartilage producing cells to a site other than a site with damaged cartilage. However, US '676 and Brittberg taken together are still considered to teach the claimed invention. US '676 and Brittberg are both concerned with introducing cartilage to a site in need thereof. US '676 uses cartilage to fill in wrinkles. Brittberg using cartilage producing cells to make cartilage at a site that needs the cartilage. US '676 clearly teaches that cartilage is needed at the site of wrinkles. Brittberg clearly teaches that introducing cartilage producing cells into a site produces cartilage. Thus, on considering both of these references, a person of ordinary skill in the art would reasonably expect that cartilage could be produced at the site of a wrinkle using cartilage

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producing cells. This reasonable expectation of success would provide the motivation to combine the teachings of the references.

Applicant also argues that the novelty of the present invention is supported by the state of the art which shows that no wrinkle filler product using proliferative cells has been developed. Applicant mentions several products and a webpage, but neither the webpage nor the product descriptions were supplied. Thus, this argument cannot be properly evaluated. Furthermore, it seems that the applicant is arguing that the claimed invention fills a long-felt-need, but this is not specifically stated. Please see MPEP section 716.04 for information about establishing non-obviousness based on long-felt-need.

4. All of applicant's arguments regarding the 103 rejection based on US '676 and Brittberg further in view of Atala have been fully considered but are not persuasive. Applicant argues that Atala teaches the use of a polymer in combination with the cartilage producing cells; thus, Atala does not teach the support free cells claimed. However, Atala was provided to show that it was known in the art at the time of the invention that cartilage producing cells from a differing species can be successfully transplanted. Atala does not teach that any type of support is necessary to insure that rejection of the foreign cell does not occur. The support is simply a carrier. Thus, a person of ordinary skill in the art would understand that Atala's use of a support is not a key factor in their disclosure that foreign cells can be transplanted.

5. No claims are allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Susan Coe whose telephone number is (571) 272-0963. The

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examiner can normally be reached on Monday to Thursday from 8:00 to 5:30 and on alternating Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Bruce Campell, can be reached on (571) 272-0974. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0196.

A handwritten signature in cursive script, appearing to read "Susan D. Coe".

Susan D. Coe, Examiner
August 10, 2004